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OFFICE OF PETITIONS

In re Application of :
Rosenberg, et al. :
Application No. 10/043,374 : DECISION ON PETITION
Filed: January 8, 2002 :
Attorney Docket No. IMM1P007D.US :
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed August 22, 2003, to accept an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of international application no. PCT/US94/07851 and nonprovisional application no. 08/092,974.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. §120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
- (2) the surcharge set forth in §1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may

require additional information where there is a question whether the delay was unintentional.

The instant application was filed on January 8, 2002, and was pending at the time of filing of the instant petition. Reference to the prior filed nonprovisional application and the international application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §120 to the prior-filed nonprovisional application and the international application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), all other requirements under 35 U.S.C. §120 and 37 CFR 1.78 must be met. Accordingly, the examiner will, in due course, consider these benefit claims and determine whether the instant application is entitled to the benefit of the earlier filing date.

As the petition fee at the time of filing the petition was \$1,300, the \$20 difference between the fee submitted and the fee due has been charged to Deposit Account No. 50-1283, as authorized.

This application is being forwarded to Technology Center 2600 for examination in due course.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.


Charles Pearson
Director
Office of Petitions

Enc: Corrected Filing Receipt (2 pages)